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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/362,189 | 07/28/1999 | STEVEN M. BESSETTE | 45112-014 | 6544 |

20277 7590 05/17/2002
MCDERMOTT WILL & EMERY
600 13TH STREET, N.W.
WASHINGTON, DC 20005-3096

EXAMINER

LEVY, NEIL S

| ART UNIT | PAPER NUMBER |
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1616

DATE MAILED: 05/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Best Available Copy



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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 10/4/01

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 5, 6, 8, 10 & 16-52 is/are pending in the application.

Of the above, claim(s) 5, 8, 16, 18-46, 48-52 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 6, 10, 12, 47 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 5, 6, 8, 10 & 16-52 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s): _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

Receipt is acknowledged of Amendment of 10/02/01.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5, 8, 16, 18-46, 48-52 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 10.

Claims 6, 10, 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims now have no antecedent for pyrethrum, among others without antecedent basis (neem, malathion—etc.). PD 984—should be identified by name/structure.

Claims 6, 10, 17 and 47 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It is not at all clear where, if at all, support lies for the essential oils of 5.6 as a pesticidal agent, or for some if not all, of the combinations of claim 17, 47, or for the newly introduced claimed compounds, such as PD 98059, THFA—Examiner was not able to identify where in the specification or prior claims these compounds are supported as claimed.

Claims 6, 10 rejected under 35 U.S.C. 102(b) as being anticipated by DE 3733640.

The rejection of record is maintained pyrethrum and citronellal in an acceptable carrier is disclosed—example.

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Guerring—WO 9108670.

The rejection of record is maintained.

Neem and citronell are pesticidal in combination with alcohol—see example.

Claims 6 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Granirer et al 4759930.

The rejection of record is maintained.

Claims 6, 10, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon et al EP 0262885.

See example 1: pyrethum and benzyl alcohol, with carrier.

Claims 6, 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Locher et al 3445565 in view of Lover et al 4368207 and Schraufstatter et al 2945782.

Locher uses pyrethrum extract with synergist (example 2) but not benzyl alcohol. Lover uses benzyl alcohol as ovicide (column 2, lines 12-18) to apply to animals to kill ova of ectoparasites (line 19-50) in shampoos and aerosols. Had Locher only known, at the time of his invention that benzyl alcohol and equivalent alcohols are ovicidal, it would have been obvious to apply the pyrethrum extract with replacement of some of

the perfume essence, in order to provide complete protection, parasiticial, ovicidal and repellent. Further Schraufstatter show the benzyl alcohol is also a disinfectant! Thus, the added benefit of not only insect but germ protection would result from use of such a composition.

The instant invention provides well known old art recognized compounds, with well known recognized effects, applied by well known art recognized methods to achieve control over pests as is well known in the art.

The primary reference discloses the essence of the instant invention as claimed, but does not specify each and every element of the instantly claimed compositions. However, the secondary references directed at the same compositions to solve the same problems of the primary reference do provide these additional elements.

It has not clearly been established by objective showing of some critical, unobvious and/or unexpected results that the composition or the particular form of active, carrier, or extract provides any greater level of prior art expectation as claimed.

It seems applicant was aware of the fact that the claimed synergists are found in pyrethrum. The reference cites a combination of pyrethrum flowers, thus inclusive of all that is in pyrethrum flowers the claimed synergists of applicant, amend other components. Eucalyptus, rosemary and peppermint include, likewise, the other instantly claimed components—the essential oil, alcohol and aldehyde compounds. The rejection is clear anticipation; because the words are not there, does not mean the ingredients are absent. A car that runs has a motor; the pesticide of Granirer kills—

applicant is invited to demonstrate the absence of their claimed components in the compositions of Granier cited by examiner.

Examiner is aware of the existence of copending applications and of patents issued, none identified in the status area of this application, which may have essentially the same or identical claimed compositions as this application now claims. Easy access to these application is not available to examiner, thus, we are requesting applicant to maintain the claimed subject matter in only one application, and cancel it in the others or identify the applications containing the similarly claimed subject matter compositions, and provide copies of claims of these, at least likely patent applications to the same or obvious variants of the same compositions.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

This application contains claims 5, 8, 16, 18-46, 48-52 are drawn to an invention nonelected with traverse in Paper No. 10. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Applicant's arguments filed 3/22/02 have been fully considered but they are not persuasive. Applicant's arguments and amendments, to the extent persuasive, have resulted, in dropping of some rejections—others maintained as explained at the

rejections and new rejections in accord with the specific combinations not heretofore claimed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 305-4556 for regular communications and 305-3592 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy: mv
May 13, 2002

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is stylized with a large initial "N" and a cursive "S. Levy".

NEIL S. LEVY
PRIMARY EXAMINER